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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,826	11/02/2006	Toshiya Ogawa	024918-0125	2381
23428 7590 09/02/2010 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				
EXAMINER				
GITOMER, RALPH J				
ART UNIT		PAPER NUMBER		
1657				
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09/02/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/587,826

Applicant(s)

OGAWA ET AL.

Examiner

Ralph Gitomer

Art Unit

1657

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The amendment received 8/5/10 has been entered and claims 1, 3, 5-14 are considered here. The amended title is acceptable. And the amendment to the specification, paper #28 filed 11/2/06, has been entered. The specification is a poor translation and lacks standard format and headings despite the amendment.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Speers in view of Nagarajan.

Speers (J Am Soc Brew Chem) entitled "Towards an Ideal Flocculation Assay" teaches on page 174 Fig. 1 Helm assay where yeast is washed in EDTA, suspended in acetate buffer with EDTA, add calcium chloride and measure flocculation at 30 minutes. On page 175 column 1 first paragraph the Soares method includes an EDTA washing step. Various wavelengths may be measured including 600 nm. On page 175 column 1 last paragraph bridging to column 2, the assay media are discussed and may have a composition representative of beer.

The claims differ from Speers in that they specify the growth phase of the yeast is late log phase or thereafter. It is understood that the floc rate differs with the growth phase along with many other factors.

Nagarajan (J of General Micro) entitled "Antigenic Studies on Flocculating Brewer's Yeast, SC NCYC 227" teaches on page 1747 column 2 under Methods, the growth medium contains yeast extract, calcium chloride, cells were washed with EDTA solution and OD₆₆₀ was determined. On page 1748 Table 1 at different growth phases and degree of flocculation were determined.

It would have been obvious to one of ordinary skill in the art at the time of the invention to practice the method of Speers to determine flocculation and to perform that method at the late log phase or thereafter because Nagarajan shows a floc assay at 6 different growth phases where the results vary greatly and the degree of flocculation increases after late log phase. The method of determining claimed is conventional. The selection of which growth phase would be determined by what one wishes to learn

about the yeast tested. No novelty is seen in selecting any particular growth phase to test the yeast

Applicant's arguments filed 8/5/10 have been fully considered but they are not persuasive.

Applicants response argues that the references do not teach all the claimed features. Speers describes the treatment of yeast by estimating flocculation of yeast and measuring sedimentation but does not prepare a high MW fraction at last logarithmic growth phase or thereafter. Nagarajan does not measure and show the relationship with growth phase of yeast and factors causing early flocculation.

It is the examiner's position that as claimed, the intended method cannot be discerned and that most of the features argued are not claimed. Nagarajan was cited to show measuring growing yeast. Applicants have not shown any relationship between the growth phase of the yeast and any factors related to early flocculation.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3, 5-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims are directed to measuring factors causing early flocculation of yeast contained in brewing materials. This is distinct from measuring a rate of flocculation. The present specification as originally filed does not provide written description above measuring a rate. No factors or mechanisms are found by the present method.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

The claims must be carefully rewritten in accordance with standard US patent practice. Only a few specifics will be addressed further here and as presented, the claims cannot be fully considered because they are not understood. In claim 1 step 1 "or thereafter" is not understood in context. And as amended in claim 1 step 1 or the collected yeast lacks antecedent basis and is not understood. In step 2 the format is improper for a method claim in past tense, and seems intentionally confusing, "a water"

is not understood for example. Step 3 is directed to a test system which is not understood and is improper. No factors are measured in claim 1. In step 4 "a precipitation level" is not understood because precipitation does not have levels. And how the steps claimed relate to the preamble is not seen. In claim 6 what enzymes may be intended is not seen and lacks antecedent basis. Claim 8 fails to further limit claim 1 from which it depends. In claim 9 "which system" is not understood. In claim 9 "the serial change of precipitation" lacks antecedent basis and is not understood. Claim 11 is not understood. In claim 12 "stand still" is not understood. Claim 13 fails to further limit claim 1 from which it depends.

This application contains claims 16-17 drawn to an invention nonelected with traverse in the reply filed on 12/31/09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

English translation of Nakamura (JP 101 791 89) teaches cohesiveness.

Mochaba (Proc Cong Eur Brew Conv) teaches flocculation.

English translation of Nakamura (JP 982 9564) may teach the present invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ralph Gitomer/
Primary Examiner, Art Unit 1657

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